

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES ANTHONY WILLIAMS,

Plaintiff,

v.

STEPHEN SINCLAIR, et. at.,

Defendants.

CASE NO. 19-5045 RJB

ORDER ON MOTION

This matter comes before the Court on the *pro se* Plaintiff's motion for various relief, post marked August 5, 2024, received by the Court August 7, 2024. Dkt. 222. The Court has considered the motion and remaining record. It is fully advised.

On January 2, 2024, a Report and Recommendation was filed recommending dismissal of the Plaintiff's claims. Dkt. 204. After granting the Plaintiff an extension of time to file objections (Dkt. 216), this Court adopted the Report and Recommendation, over the Plaintiffs objections, on June 4, 2024 (Dkt. 220). The judgment was entered on June 4, 2024. Dkt. 221.

1 The Plaintiff mailed the instant motion with the United States Post Office. Dkt. 222. It is
2 dated Wednesday, July 31, 2024, postmarked Monday, August 5, 2024, and was received by this
3 Court on Wednesday, August 7, 2024. Dkt. 222 at 27 and 47. In this motion, the Plaintiff asks
4 for various forms of relief, including: (1) granting him an extension of time to file an appeal, (2)
5 to send him forms to file an appeal with the Ninth Circuit Court of Appeals, (3) to send him
6 information on the deadline to file an appeal, (4) to send him instructions on how to file an
7 appeal, (5) to order the Defendants send him a copy of all his pleadings filed in the case, (6)
8 appointment of an attorney, and (7) appointment of a neurologist. Dkt. 222. The Plaintiff's
9 motion also discusses the merits of his case and challenges prior rulings. *Id.* To the extent he
10 challenges prior rulings, his motion should be considered a motion for reconsideration.

11 **Motion for an Extension of Time for an Appeal.** This Court should first consider
12 whether the Plaintiff has filed a timely appeal or is entitled to an extension of time to file an
13 appeal.

14 Pursuant to Federal Rule of Appellate Procedure ("Fed. R. App. P.") 4, except in
15 situations which do not apply here, "a notice of appeal must be filed with the district clerk within
16 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(A). The
17 exceptions that don't apply here include when the United States is a party and when a party files
18 certain **timely** motions like a motion for entry of a judgment, motion to amend a judgment,
19 motion to make further findings regarding a judgment, motion to alter a judgment, or a motion
20 for a new trial. Fed. R. Civ. P. 4(a)(1)(A), (a)(1)(B), and (a)(4)(*citing* Fed. R. Civ. P. 50, 52, 59,
21 and 60). For these motions under Fed. R. Civ. P. 50, 52, 59, and 60 to be timely, they must be
22 made within 28 days of entry of the judgment. Fed. R. Civ. P. 50(b), 52(b), 59(e), and 60.

1 Fed. R. App. P. 4(c), provides an exception to the requirement that notices of appeal be
2 filed within 30 days of the date judgment was entered for inmates confined in an institution, like
3 the Plaintiff. It provides:

4 (1) If an institution has a system designed for legal mail, an inmate confined there
5 must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a
6 notice of appeal in either a civil or a criminal case, the notice is timely if it is
deposited in the institution's internal mail system on or before the last day for
filing and:

7 (A) it is accompanied by:

8 (i) a declaration in compliance with 28 U.S.C. § 1746--or a
9 notarized statement--setting out the date of deposit and stating that
first-class postage is being prepaid; or

10 (ii) evidence (such as a postmark or date stamp) showing that the
11 notice was so deposited and that postage was prepaid; or

12 (B) the court of appeals exercises its discretion to permit the later filing of
a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

13 July 4, 2024 is the date which is 30 days after the June 4, 2024 judgment was entered.
14 Pursuant to Western Dist. of Washington Local Rule of Civil Procedure 6(a), when a party is to
15 act within a period of time and the last day is a Saturday, Sunday, or legal holiday, the time
16 continues to run until the last day of the period is not a Saturday, Sunday or legal holiday.
17 Accordingly, a notice of appeal was due Friday, July 5, 2024. The Plaintiff's motion is not a
18 timely filed notice of appeal, even with the extension allowed confined inmates under Fed. R.
19 App. P. 4(c). Further, it is not a timely motion under Fed. R. Civ. P. 50, 52, 59, or 60 and so is
20 not entitled to extra time due to the filing of those motions.

21 Fed. R. App. P. 4(a)(5) permits motions for extensions of time to file an appeal. It
22 provides that a district court may grant an extension of time to file a notice of appeal if "a party
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1 so moves no later than 30 days after the time prescribed by Rule 4(a) expires” and “that party
2 shows excusable neglect or good cause.” Fed. R. App. P. 4(a)(5)(A)(i) and (ii).

3 Sunday, August 4, 2024 is 30 days after July 5, 2024, the date the 30-day period
4 prescribed by Rule 4(a) expires (30 days after the June 4, 2024 judgment). Accordingly,
5 Monday, August 5, 2024 is the deadline set by Fed. R. App. P. 4(a)(5) for motions for extension
6 of time to file a notice of appeal. The Plaintiff’s motion is dated Wednesday, July 31, 2024,
7 postmarked Monday, August 5, 2024, and was received by this Court on Wednesday, August 7,
8 2024. Dkt. 222 at 27 and 47.

9 The Plaintiff’s motion for an extension of time to file an appeal (Dkt. 222) should be
10 denied without prejudice. Pursuant to the U.S. Dist. Court for the Western District of
11 Washington General Order 06-16, prisoners, like the Plaintiff, who are confined at Stafford
12 Creek Corrections Center are directed to use the Court’s electronic filing system. In this case,
13 the Plaintiff sometimes filed documents and motions electronically (*see e.g.* Dkt. 214) and did
14 not do so for others despite several warnings from the Court. He did not electronically file this
15 motion. Dkt. 222.

16 The Plaintiff’s motion for an extension of time to file a notice of appeal was received on
17 August 7, 2024 - two days after the August 5, 2024 deadline. Accordingly, it is untimely. Fed.
18 R. App. P. 4 does not contain an exception that grants additional time for inmates confined in
19 institutions to file motions for extensions of time – only to file their notices of appeal. His
20 motion for an extension of time to file an appeal (Dkt. 222) should be denied without prejudice.

21 **Motion for forms to file appeal, information on the deadline to file an appeal, and**
22 **instructions on how to file an appeal.** The Plaintiff may wish to appeal this order.
23 Accordingly, the Plaintiff’s motion for forms to file an appeal should be granted and the Clerk of
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1 the Court should send the Plaintiff forms to file an appeal. The Plaintiff's motion for
2 information about how to file an appeal should be denied. He may wish to consult the Federal
3 Rules of Appellate Procedure and the Ninth Circuit Rules to gain information on the deadline to
4 file an appeal and instructions on how to file an appeal. He may also write to the Clerk of the
5 Court for the Ninth Circuit.

6 **Motion for order requiring the Defendants to send him a copy of all his pleadings**
7 **filed in the case.** The Plaintiff's motion for an order requiring the Defendants to send him a
8 copy of all his pleadings filed in this case should be denied. The Plaintiff has failed to point to
9 any law requiring or justifying such an order.

10 **Motion for appointment of an attorney and for a neurologist.** Under 28 U.S.C. §
11 1915(e)(1), the court may request an attorney to represent any person unable to afford counsel.
12 Under Section 1915, the court may appoint counsel in exceptional circumstances. *Franklin v.*
13 *Murphy*, 745 F.2d 1221,1236 (9th Cir. 1984). To find exceptional circumstances, the court must
14 evaluate the likelihood of success on the merits and the ability of the petitioner to articulate the
15 claims *pro se* in light of the complexity of the legal issues involved. *Weygandt v. Look*, 718 F.2d
16 952, 954 (9th Cir. 1983).

17 The Plaintiff's motion for appointment of an attorney should be denied. He is unlikely to
18 succeed on the merits. Further, the Plaintiff is relatively articulate in raising issues and
19 explaining his positions to the Court. The case does not present exceptional circumstances.
20 Moreover, the Plaintiff had counsel appointed at one time in this case, and counsel was permitted
21 to withdraw on July 9, 2021. Dkt. 69.

22 The Plaintiff's motion for appointment of a neurologist should be denied. He has failed to
23 make a showing that such an appointment is proper.
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To the extent the Plaintiff moves for reconsideration of prior decisions in this case (Dkt. 222) his motion should be denied. It is untimely.

Accordingly, it is **ORDERED** that:

- The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Robert Bryan

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